

NOT FOR CITATION  
IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

VIET MIKE NGO,

No. C 04-1627 JF (PR)

Petitioner,

ORDER GRANTING PETITIONER'S  
MOTION TO VACATE JUDGMENT;  
ORDER REOPENING CASE;  
INSTRUCTIONS TO CLERK

v.

J. SOLIS,

Respondent.

(Docket No. 15)

Petitioner, a state prisoner proceeding pro se, filed the instant petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. On May 29, 2007, the Court's order addressed to Petitioner was returned to the Clerk of the Court with a notation that it was undeliverable because Petitioner was "out to court as of 5/2/2007." On September 30, 2007, the Court dismissed the instant habeas action without prejudice pursuant to Northern District Local Rule 3-11 for Petitioner's failure to keep the Court informed of his current address.

Petitioner now moves the Court to vacate the judgment and reopen the instant case pursuant to Federal Rule of Civil Procedure 60(b). Rule 60(b) lists six grounds for relief from a judgment. Such a motion must be made within a "reasonable time," and as to grounds

1 for relief (1) - (3), no later than one year after the judgment was entered. See Fed. R. Civ. P.  
2 60(b). A Rule 60(b) motion does not affect the finality of a judgment or suspend its  
3 operation, see id.; therefore, a party is not relieved of its obligation to comply with the  
4 court's orders simply by filing a Rule 60(b) motion. Hook v. Arizona Dep't of Corrections,  
5 107 F.3d 1397, 1404 (9th Cir. 1997).

6 Rule 60(b) provides for reconsideration where one or more of the following is shown:  
7 (1) mistake, inadvertence, surprise or excusable neglect; (2) newly discovered evidence  
8 which by due diligence could not have been discovered before the court's decision; (3) fraud  
9 by the adverse party; (4) the judgment is void; (5) the judgment has been satisfied; (6) any  
10 other reason justifying relief. Fed. R. Civ. P. 60(b); School Dist. 11 v. ACandS Inc., 5 F.3d  
11 1255, 1263 (9th Cir.1993). "Rule 60(b) [] provides a mechanism for parties to seek relief  
12 from a judgment when "it is no longer equitable that the judgment should have prospective  
13 application," or when there is any other reason justifying relief from judgment. Jeff D. v.  
14 Kemphorne, 365 F.3d 844, 853-54 (9th Cir. 2004) (quoting Fed. R. Civ. P. 60(b)). Rule  
15 60(b) is not intended to remedy the effects of a deliberate and independent litigation decision  
16 that a party later comes to regret through second thoughts or subsequently-gained knowledge.  
17 Latshaw v. Trainer Wortham & Co., 452 F.3d 1097, 1099 (9th Cir. 2006) (denying  
18 reconsideration to a party who had settled and then discovered that her attorney had made  
19 legal errors in advising her to settle).

20 Under subparagraph (1), "the determination of whether neglect is excusable is an  
21 equitable one that depends on at least four factors: (1) the danger of prejudice to the  
22 opposing party; (2) the length of the delay and its potential impact on the proceedings; (3) the  
23 reason for the delay; and (4) whether the movant acted in good faith." Bateman v. United  
24 States Postal Serv., 231 F.3d 1220, 1223-24 (9th Cir. 2000). Based upon these factors, the  
25 Court concludes that Petitioner has shown good cause for his excusable neglect in his failure  
26 to update his current address based upon his temporary stay in the Santa Clara County jail for  
27 his pending state court proceedings. See Pet.'s Decl. at 1-2.

1 Accordingly, Petitioner's motion to vacate the judgment (docket no. 15) is GRANTED.

2 **CONCLUSION**

3 Petitioner's motion to vacate the judgment pursuant to Federal Rule of Civil  
4 Procedure 60(b) (docket no. 15) is GRANTED. The judgment entered on September 30,  
5 2007 is VACATED. The Clerk shall REOPEN the file. The Court will address the merits of  
6 Respondent's motion to dismiss in a separate written order.

7 It is Petitioner's responsibility to prosecute this case. Petitioner must keep  
8 the Court and all parties informed of any change of address by filing a separate paper  
9 captioned "Notice of Change of Address." Petitioner must comply with the Court's orders in  
10 a timely fashion. Failure to do so may result in the dismissal of this action for failure to  
11 prosecute pursuant to Federal Rule of Civil Procedure 41(b).

12 IT IS SO ORDERED.

13 Dated: 4/30/08  
14 \_\_\_\_\_

  
15 JEREMY FOGEL  
16 United District Court Judge  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28